SALAHUDDIN SHAMSUDIN v. PP

HIGH COURT MALAYA, KOTA BHARU
MOHD ROSLI YUSOFF JC
[CRIMINAL APPEAL NO: DA-41S-28-10-2024]
19 MAY 2025

Abstract – *It is obligatory upon the court under the proviso to s. 74(2) of the Animals Act 1953 to give an opportunity for the owner of a conveyance used in the commission of an offence, if his name and whereabouts are known, to appear before the court and show cause as to why the order of forfeiture should not be made. A failure to give such an opportunity would cause the order of forfeiture of such conveyance to be set aside and the said conveyance returned to the registered owner.*

CRIMINAL PROCEDURE: *Forfeiture – Order of forfeiture – Whether Magistrate had right to order forfeiture of conveyance ie, motor lorry used in commission of offence punishable under s. 36(7) of Animals Act 1953 – Whether owner of conveyance must be given opportunity to be heard and to show cause why forfeiture order should not be made – Animals Act 1953, s. 74(2)*

This was an appeal by the appellant against the decision of the Magistrate in respect of the order of forfeiture of a motor lorry which was used in the commission of an offence punishable under s. 36(7) of the Animals Act 1953 ('Act'). The appellant had pleaded guilty to the charge. Upon hearing the plea of mitigation and aggravation by both the appellant and the prosecuting officer, the appellant was fined RM50,000 in default, two months imprisonment and goods forfeited including the motor lorry which was the subject matter of this appeal. The sole issue raised by the appellant was whether the Magistrate was correct to order the forfeiture of the conveyance, the motor lorry. The appellant submitted the said motor lorry did not belong to the appellant and that in order to forfeit a conveyance under s. 74(2) of the Act, the owner of such conveyance must be given an opportunity to be heard and to show cause why such forfeiture order should not be made. The Deputy Public Prosecutor, however, argued that under s. 74(2) of the Act, the Magistrate had the discretion to order a forfeiture of the goods seized if he was satisfied that the offence under the Act has been committed.

Held (allowing appeal):

(1) From a reading of proviso to s. 74(2) of the Act, it was clear that before a Magistrate may order any forfeiture of a 'conveyance', it is incumbent upon the Magistrate to call upon the owner of the conveyance, if his name and whereabouts are known, to show cause as to why an order of forfeiture of the conveyance should not be made. The Magistrate herein, upon being satisfied with the guilty plea of the appellant, proceeded to

convict and sentence the appellant and at once ordered all the exhibits including the said motor lorry to be forfeited. There was no record to show that, prior to the making of the order of forfeiture, the Magistrate had given a reasonable opportunity for the owner to appear and to show cause why the forfeiture order should not be made. (paras 16-20)

(2) Having found that it was obligatory upon the court under the proviso to s. 74(2) of the Act to give an opportunity for the owner of the said motor lorry to appear before the court and show cause as to why the order of forfeiture should not be made in respect of the said motor lorry, and having found that the Magistrate had failed to give such opportunity to the owner of the said motor lorry, the appellant's appeal was allowed. The order of the Magistrate forfeiting the said motor lorry was set aside and the said motor lorry was ordered to be returned to the registered owner. (paras 29 & 30)

Case(s) referred to:
PP v. Ong Ah Kau & Ors [1975] CLJU 206; [1975] 1 LNS 206 ***(refd)***
R Valoo Maiyee P Ramiah lwn. PP [2018] CLJU 1087; [2018] 1 LNS 1087 HC ***(refd)***

Legislation referred to:
Animals Act 1953, ss. 36(7), 74(2)
Control of Supplies Act 1961, s. 26

For the appellant - Norizaidah Abdul Salam; M/s Zaidah Abdul Salam & Co
For the respondent - Nor Hamizah Ghazali; DPP

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Rosli Yusoff JC:

Introduction

[1] This is an appeal by the appellant against the decision of the learned Magistrate in respect of the order of forfeiture of a lorry CBR 9911 which was used in the commission of an offence punishable under s. 36(7) of the Animals Act 1953 (the Act).

Facts Of The Case

[2] The appellant was charged as follows:

> Bahawa kamu pada 22/01/2024 lebih kurang jam 0030HRS di tepi bahu jalan Kilometer 227 menghala ke Ipoh, Perak. Didapati telah memindahkan 20,000 ekor anak ayam hidup menggunakan sebuah motolori no. pendaftaran CBR 9911 (warna: merah, jenis: Hicom Perkasa) tanpa Kebenaran Bertulis dan Sijil Kesihatan Veterinar daripada Pengarah Perkhidmatan Veterinar Negeri Kelantan atau mana-mana pihak berkuasa veterinar yang diberi kuasa olehnya.

Oleh yang demikian, kamu telah melakukan kesalahan di bawah Perenggan (2), Perintah Larangan Pemindahan Unggas (Jajahan Tanah Merah, Tumpat, Jeli dan Pasir Mas, [Kn.P.U26/2017]. Jika disabitkan dengan kesalahan kamu boleh di hukum denda tidak melebihi RM15,000.00 di bawah Subseksyen 36(7) Akta yang sama.

Hukuman:

Jika disabitkan dengan kesalahan boleh didenda tidak melebihi lima belas ribu ringgit (RM15,000.00).

[3] The appellant, who was not represented by any defence counsel had pleaded guilty to the charge. The appellant then pleaded for mitigation as follows:

OKS: Saya mohon maaf. Ini adalah merupakan kesalahan pertama dan juga terakhir yang akan saya lakukan. Saya pohon agar denda dikurangkan kerana saya perlu menanggung keluarga. Saya merupakan anak ke-6 daripada 11 orang adik beradik. Bujang dan perlu menjaga ibu bapa. Saya sekarang bekerja sebagai seorang nelayan dengan pendapatan yang tidak menentu sekitar RM1,000.00 sebulan. Saya pohon agar barang kes iaitu motorlori dikembalikan kepada saya untuk dipulangkan kepada pemilik asal.

[4] The prosecuting officer (PO) then pleaded for aggravation as follows:

PO: Pohon hukuman yang setimpal dikenakan ke atas OKS untuk dijadikan sebagai pengajaran kepada OKS dan masyarakat di luar. Adanya risiko penyebaran penyakit unggas yang berkaitan dengan penyakit influenza burung dan avian influenza sekiranya dibiarkan tanpa pemeriksaan. Saya pohon agar Mahkamah ini melucuthak barang-barang kes iaitu 20,000 ekor anak ayam dan motolori CBR 9911 untuk dijadikan sebagai hasil kerajaan di bawah s. 74(1) Akta Binatang 1953.

[5] The learned Magistrate, after considering the facts of the case, relevant exhibits and upon hearing plea of mitigation and aggravation by both the appellant and the PO, passed the following sentence.

Mah: OKS didapati bersalah terhadap pertuduhan.Hukuman denda RM5,000.00 gagal bayar 2 bulan penjara. Barang-barang kes dilucuthak dan dilupuskan oleh Jabatan Veterinar Kelantan setelah tamat tempoh rayuan.

[6] "Barang-barang kes" that were forfeited included a motor lorry bearing registration no. CBR 9911 which is the subject matter of this appeal.

The Appeal

[7] The sole issue raised by counsel for the appellant in this appeal is whether the learned Magistrate was right to order the forfeiture of the conveyance, which is in this case, a motor lorry bearing registration no. CBR 9911.

A **Brief Submission Of The Defence Counsel**

[8] It was submitted by learned counsel of the appellant that in order to forfeit a conveyance under s. 74(2) of the Act, the owner of such conveyance must be given an opportunity to be heard and to show cause why such forfeiture order should not be made.

B

[9] Counsel for the appellant submitted that the said motor lorry did not belong to the appellant, but to one Haslina Binti Mat Husin (NRIC No: 841029-03-5650) trading as Duanna Enterprise.

[10] It was further submitted on behalf of the appellant that when the C charge under s. 36 of the Act was read and explained to the appellant, it was not read together with s. 74 of the Act. Section 74 of the Act was only mentioned by the PO in his submission for aggravation.

[11] It was also argued on behalf of the appellant that s. 74 does not provide for a mandatory forfeiture. Forfeiture may only be ordered if there is further D evidence and the court is satisfied with such evidence.

Brief Submission Of The DPP

[12] Learned DPP in her submission states that the sentence passed by the learned Magistrate was fair and not too high.

E

[13] It was also argued that under s. 74(2) of the Act, the Magistrate has the discretion to order forfeiture of the goods seized if he was satisfied that the offence under the Act had been committed.

[14] Finally, learned DPP contended that despite the fact that s. 74 was not F stated in the charge, not read and not explained to the appellant, the appellant knew that the court may order the forfeiture of the said motor lorry. That was why in his plea for mitigation, he pleaded that the motor lorry be released to him to be returned to the owner.

Analysis And Finding Of The Court

G

[15] Since the central issue of this appeal is concerning the forfeiture of the said motor lorry under s. 74(2) of the Act, it is imperative to state the whole provision of s. 74 of the Act as follows:

> **Section 74. Forfeiture**
>
> H (1) Any animal or bird, or carcass, semen, fodder, litter, dung, or any product of animals or birds or any article or substance, conveyance or document that has been seized or any proceeds of a sale under this Act or any subsidiary legislation made under this Act shall be liable to forfeiture.
>
> I (2) Any order for the forfeiture or for the release of any animal or bird, or carcass, semen, fodder, litter, dung, or any product of animals or birds or any article or substance, conveyance or document that has been seized in exercise of any power conferred under this Act or any subsidiary

legislation made under this Act or the proceeds of any sale under it shall be made by the court before which the prosecution with regard thereto has been held and an order for its forfeiture shall be made if it is proved to the satisfaction of the court that an offence against this Act has been committed and it was the subject matter of or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence Provided that no order of forfeiture shall be made in respect of a conveyance unless the owner, if his name and place of residence is known, shall have had an opportunity of appearing to show cause why such order should not be made.

(3) Any animal or bird, or carcass, semen, fodder, litter, dung, or any product of animals or birds or any article or substance, conveyance or document or the proceeds from any sale forfeited under this section shall be disposed of in accordance with the direction of the Magistrates.

[16] From the reading of the proviso to s. 74(2) of the Act, it is clear that before a Magistrate may order any forfeiture of a "conveyance" it is incumbent upon the Magistrate to call upon the owner of the conveyance, if his name and whereabout is known, to show cause as to why an order of forfeiture of the conveyance should not be made.

[17] There are several meaning the of the word "conveyance" according to the English dictionary, *inter alia*:

(i) the act of conveying; transmission; communication; and

(ii) a means of transporting, especially a vehicle as a bus, airplane, or automobile.

[18] From the meaning of the word "conveyance", we may conclude that the motor lorry bearing registration no. CBR 9911 was the conveyance in this case within the meaning of s. 74(2) of the Act.

[19] In this case, from the notes of evidence, apparently, the learned Magistrate, upon being satisfied with the guilty plea of the appellant, proceeded to convict and sentence the appellant and at once ordered all the exhibits, including the said motor lorry, to be forfeited.

[20] There was no record to show that prior to the making of the order of forfeiture, the learned Magistrate had given a reasonable opportunity for the owner to appear and show cause why the forfeiture order should not be made.

[21] The learned Magistrate might have easily obtained the information of the owner of the motor lorry through the appellant since the appellant had made it clear to the learned Magistrate and requested in his plea for mitigation for the motor lorry to be released to him to enable him to return the same to the owner.

[22] The cases referred to by learned counsel for the appellant, *ie*, the case of *R Valoo Maiyee P Ramiah lwn. PP* [2018] CLJU 1087; [2018] 1 LNS 1087; [2018] MLRHU 850 and the case of *PP v. Ong Ah Kau & Ors* [1975] CLJU 206; [1975] 1 LNS 206; [1975] 1 MLRH 681 though related to the discretionary power of the court to order forfeiture but not so much in point to the issue in this appeal as those cases dealt with a different provisions of law namely the provision of Lembaga Padi dan Beras Negara Act 1971 and Control of Supply Act 1961 which provisions are not *in pari materia* with s. 74(2) of the Act.

[23] In the case of *R Valoo Maiyee P Ramiah* (*supra*) the relevant provision of law dealt with was s. 26 of Control of Supplies Act 1961 that provides as follows:

> (1) Where any person is convicted of an offence against this Act the court may order the confiscation in whole or in part of:
>
> ...

[24] In that case, Abd Majid Tun Hamzah, PK (as he then was) held as follows:

> [22] Mahkamah mempunyai budibicara sama ada hendak merampas atau memulangkan GPC itu kepada Responden dan budibicara ini hendaklah dipertimbangkan secara "judiciously" ...

[25] In the case of *PP v. Ong Ah Kau & Ors* (*supra*) the relevant provision of law dealt with was s. 29(1) of Lembaga Padi dan Beras Negara Act 1971 that provides as follows:

> (1) Where any person is convicted of an offence under this Act or under any regulation made thereunder the court may order the confiscation in the whole or in the part of: ...

[**26]** In that case, it was held by Syed Agil Barakbah J (as he then was) that the learned President construed the provision correctly and that the power of the court to order confiscation of the rice is not mandatory but discretionary.

[27] In both cases referred to by learned counsel of the appellant, the provisions of law are clear that if any person is convicted of an offence under those Act, then the court "may" confiscate the goods seized subject to any further or other requirement.

[28] On the other hand, the provision of s. 74 of the Act does not require any person to be convicted first before the court can exercise the power of forfeiture. However, the proviso to s. 74(2) makes it obligatory upon the court before exercising its power to forfeit the conveyance, to call upon the owner of the conveyance to show cause why it should not be forfeited.

Conclusion

[29] Having found that it is obligatory upon the court under the proviso to s. 74(2) of the Act to give an opportunity for the owner of the said motor lorry to appear before the court and show cause as to why the order of forfeiture should not be made in respect of the said motor lorry, and having found that the learned Magistrate had failed to give such opportunity to the owner of the said motor lorry, this court had allowed the appellant's appeal.

[30] The order of the Magistrate forfeiting the said motor lorry bearing registration no. CBR 9911 is set aside and the said motor lorry shall be returned to the registered owner.